#  VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

#  administrative DIVISION

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| planning and environment LIST | vcat reference No. P2475/2017  |

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| CATCHWORDS |
| Application under s 33B (1) (a) of the *Environment Protection Act 1970* to review the decision of the EPA to issue a works approval. |

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| APPLICANT | Western Region Environment Centre Inc. |
| RESPONSIBLE AUTHORITY | Environment Protection Authority |
| RESPONDENT | Wyndham City Council |
| Joined Party  | Metropolitan Waste and Resource Recovery Group |
| Other | Sustainability Victoria |
| SUBJECT LAND | 470 Wests RoadWERRIBEE |
| WHERE HELD | Melbourne |
| BEFORE | Laurie Hewet, Senior MemberGreg Sharpley, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 21,22,23,24 and 25 May 2018 |
| Date of interim orders | 29 May 2018, 14 June 2018 |
| DATE OF ORDER | 27 July 2018  |
| CITATION | Western Region Environment Centre Inc. v Environment Protection [2018] VCAT 1174 |

# Order

1. The application for review by Western Region Environment Centre Inc. is allowed in part.
2. The decision of the Environment Protection Authority in relation to works approval application WA148798 is varied.
3. Pursuant to s 37 of the *Environment Protection Act 1970* the Environment Protection Authority is directed to issue a works approval for the premises at 470 Wests Road WERRIBEE. The works approval allows the extension of the landfill operations for the deposit of solid inert waste, putrescible waste, and pneumatic tyres shredded into pieces <250mm subject to the inclusion in the works approval the following additional condition:
4. Under the heading Works Conditions the following condition WA\_W19 must be included:

In order to minimise the potential for odour issues at the adjacent dwellings to the east and the new residential development to the north, the area of the tipping face in cells 5A, 5B and 5C shall be no greater than 900 square metres.

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| **Laurie Hewet****Senior Member** |  | **Greg Sharpley****Member** |

# APPEARANCES

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| For Applicant | Ms Sarah Porritt of counsel and Ms Fiona Hodgson of counsel instructed by Environment Justice AustraliaThey called the following expert witnesses:* Mr John Nolan, environmental engineer and hydrogeologist.
* Ms Tracy Joanne Freeman, air quality consultant.

The following lay witnesses were called:* Mr Harry Van Moorst.
* Ms Marie Concetta Menegazzo.
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| For the Environment Protection Authority  | Mr Ian Munt of counsel instructed by Mr Peter Tziotis, EPA |
| For Wyndham City Council | Mr Stefan Fiedler of Russell KennedyHe called the following witnesses:* Mr Neil Thomson, geotechnical and environmental engineer.
* Mr John Piper – landfill cap stability.
* Mr David Ife – hydrogeologist.
* Dr Graeme Ross – Air Modelling.
* Dr Terry Bellair – Air Quality
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| For Metropolitan Waste and Resource Recovery Group | Dr Joseph Monaghan of Holding Redlich. |
| For Sustainability Victoria  | Ms Peta Broughton solicitor of Sustainability Victoria. |

# INFORMATION

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| Land Description | Wyndham City Council currently owns and operates the Wests Road Refuse Disposal Facility (RDF). The RDF comprises an area of approximately 212 Ha and is situated in primarily agricultural land approximately south west of the existing Werribee residential area, adjacent to the Melbourne-Geelong rail line and 500 m west of the Melbourne-Geelong freeway. Land surrounding the landfill is predominantly farm land used predominantly for grazing. There are some isolated rural residences in the vicinity of the site. For the purpose of the odour modelling ten sensitive receptor locations have been identified. The closest is within 170m of the site boundary to the west. This property has been recently purchased by the Council with conditions allowing the current occupier to remain in the dwelling for the immediate future, following which the Council would assume occupation of the property. The next closest residence is 500m to the north west, another is about 540m to the south, and there are two residences within 700m of the eastern boundary. There are also a few buildings and structures used for a combination of rural, commercial and industrial purposes. Land to the north beyond the railway line is included in the Urban Growth Zone. A residential estate (Harpley Estate) is currently under construction in that area. The southern section of the estate is identified as a ‘future employment precinct’ in accordance with local policy.  |
| Description of Proposal | Wyndham City Council seeks to enlarge an existing above and below ground putrescible waste, solid inert waste and shredded tyre landfill at 470 Wests Road Werribee to provide an additional estimated 26 years of life to the landfill. The landfill is situated in a hard rock quarry which is still operating and is to be constructed to a maximum height of approximately 24m above the existing ground level, to coincide with the licence conditions for the existing landfill. |
| Nature of Proceeding | Application under Application under s 33B (1) (a) of the *Environment Protection Act 1970* to review the decision of the EPA to issue a works approval. |
| The Planning Scheme | The RDF is located in the south west corner of the Urban Growth Boundary (UGB). The Werribee Growth Corridor Plan contemplates significant development within the UGZ. Detailed planning for land within the UGB is not complete but the Wyndham Council is proposing in accordance with local policy (clause 21.04-2 of the planning scheme) to include the RDF and the surrounding environs in employment/industrial zone. The Werribee Growth Corridor Plan also contemplates this course of action. The RDF is currently zoned Special Use Zone (SUZ6 – Earth and Energy Resources Industry) and part Farming Zone at the entrance of the site. Zones surrounding the site are:* To the north across the Melbourne – Geelong Railway line: Farming Zone (FZ2), SUZ6 and Urban Growth Zone UGZ, part of which is designated for future employment land under the Werribee Growth Corridor Plan.
* To the east – FZ
* To the south – SUZ6
* To the west – Public Use Zone (PUZ1 – Service & Utility, Melbourne Water Western Treatment Plant).

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# REASONS[[1]](#footnote-2)

## What is this proceeding about?

1. This is an application under s 33B (1) (a) of the *Environment Protection Act 1970* (the EP Act) brought by the Western Region Environment Centre (WREC) to review the decision of the Environment Protection Authority (EPA) to issue a works approval to enlarge an existing above and below ground landfill (Area and Mound landfill type) at West Road Werribee to provide an additional estimated 26 years of life to the landfill.
2. Section 33B of the EP Act provides for third party review of decisions concerning works approvals in the following terms:

If the Authority or a delegated agency—

(a) issues a works approval; or

(b) issues a licence on an application to which section 20(8) applies; or

(c) amends a licence on an application to which section 20A(6) applies; or

(d) removes the suspension of a licence—

a person whose interests are affected by the decision (other than the applicant or licence holder)[[2]](#footnote-3) may apply to the Tribunal, within 21 days after the decision is made, for review of the decision.

1. The grounds upon which a third party can bring an application for review are set out in paragraphs 33B(2)(a) and (b) of the EP Act. In this case the applicant for review relies only on s 33(2)(b) which provides:

that if the works are completed in accordance with the works approval, the use of the works will result in—

(i) a discharge, emission or deposit of waste to the environment; or
(ii) the reprocessing, treatment, storage, containment, disposal or handling of waste; or

(iii) the reprocessing, treatment, storage, containment, disposal or handling of substances which are a danger or a potential danger to the quality of the environment or any segment of the environment—

in the area which will be inconsistent with any relevant Order declared under section 16, 16A or 17A for the area, or if no relevant Orders have been declared under any of those sections for that area, would cause pollution or an environmental hazard.

1. WREC submits that if the works are completed in accordance with works approval no. 148798 the works will contribute to the disposal of waste in a manner that will be inconsistent with the *Waste Management Policy (Siting, Design and Management of Landfills)* (WMP(SDML)) a document that is an order made under section 16A(1) of the EP Act.
2. WREC submits that the works approval fails to comply with clauses 15(3) to 15(5) of the WMP (SDML) which provides that:

(3) An Applicant for or a holder of works approval or licence for a landfill site must:

(a) comply with the policy as well as all other relevant State environment protection policies and waste management policies;

(b) meet the objectives of the Best Practice Environmental Management – Siting, Design, Operation and Rehabilitation of Landfills (BPEM)[[3]](#footnote-4);

(c) meet each required outcome of the BPEM.

(4) An Applicant for or a holder of works approval or licence for a landfill site should use the suggested measures in the BPEM to demonstrate that subclause 3 will be met.

(5) If an Applicant for a works approval, licence, or licence amendment, proposes measures alternative to the suggested measures of the BPEM, the Authority shall not issue the works approval, licence or licence amendment unless the Applicant satisfied the Authority that the alternative measures:

(a) meets the requirements of subclause (3); and

(b) provide at least an equivalent environmental outcome to that provided by the suggested measure.

1. S.33(B)(2) of the EP Act limits the grounds for third party reviews.
2. WREC’s grounds of the application are those contained in its Further Amended Statement of Grounds dated 12 January 2018, and are summarised as follows[[4]](#footnote-5):
3. There has been no assessment of whether a mound landfill meets the requirements imposed by local conditions, contrary to the BPEM.
4. The side slopes of the landfill have not met the BPEM objectives to ensure that materials, construction methods and installation procedures to deliver a landfill meeting design criterion and to ensure that the site minimises environmental and health safety risks, contrary to the BPEM.
5. The undisturbed regional groundwater levels in the area of the landfill expansion have not been established, contrary to the BPEM objective to gain a thorough understanding of the environment where the landfill is to be sited and to conduct a hydrogeological assessment to assess potential impacts on groundwater. WREC further submit that additional design and management measures are contrary to policy and no assessment has been made of whether the proposed solution provides environmental equivalence to the solution recommended in the BPEM.
6. There is no compliance with the required outcome of prevention of offensive odours beyond the boundary of the premises in accordance with the BPEM.
7. The works do not meet the BPEM requirement to keep the tipping face as small as possible in accordance with the BPEM.
8. The EP Act requires the Tribunal to be satisfied that at least one of the grounds will be made out. The applicants for review must establish that, based on an assumption that the works *will* be completed in accordance with the works approval, the works *will* still result in a discharge or emission etc. that *will* unreasonably and adversely affect their interests or *will* be inconsistent with a SEPP or a waste management policy.[[5]](#footnote-6)
9. The Tribunal’s powers on review under Part iv of the EP Act are at section 37. Under section 37(a) the Tribunal may direct that a works approval shall or shall not be issued or transferred or be subject to a specified condition. Relevantly section 37A of the EP Act provides that the Tribunal in determining an application for review must take account of, and give effect to any relevant State environment protection policy or waste management policy.

Summary of the Issues and our findings

1. In broad terms WREC submits that the works approval does not comply with clauses 15(3) to 15(5) of the WMP (SDML) and consequently, the operation of the landfill carried out in accordance with the works approval would cause pollution or an environmental hazard. WREC raises several technical issues that it submits have not been adequately addressed and remain unresolved. WREC submits that the resolution of these issues ought not be left to a later detailed design stage. It submits the unresolved issues are fundamental to the successful operation of the landfill and are most appropriately resolved ‘upfront’ as part of the works approval process during which the community can continue to have meaningful involvement through review processes.
2. WREC’s concerns also address broader policy considerations around the justification for the provision of additional landfill airspace. The proposed time frame for the operation of the landfill (26 years) is also of concern especially in circumstances where, following the issue of the works approval, the community will be denied further opportunity to seek a review of the EPA’s decision making.
3. Our findings about these matters are summarised as follows:
	* + - 1. The EPA and Metropolitan Waste and Resource Recovery Group (MWRRG) submissions provide compelling support for the need to both continue the operation of the RDF and increase the number of cells available in order to provide long term certainty for the ongoing operation of the RDF as a landfill site which has both metropolitan and regional significance.
				2. There are no technical issues which have not been adequately addressed to enable the issue of a works approval. In particular:
* Having regard to the importance, successful operation and continued independent review and evaluation of the ongoing operation of the Werribee landfill the continuation of the operation as an area and mound landfill is appropriate and should not be considered as a basis to refuse the works approval.
* On the evidence, slope stability of the outer face is an issue which can be addressed in detail at the design stage and we are satisfied that it can be designed to be in accordance with the landfill BPEM to ensure its long-term stability.
* Concerns about long-term groundwater level have earlier been raised by the EPA and addressed by the proponent, resulting in design modifications which are suitable to enable the design of the landfill to progress. The proposed design meets the requirements of the BPEM.
* On the evidence, the modelling carried out in accordance with the EPA recommend risk assessment methodology identifies that the expansion of existing landfill will have minimal impact in terms of increased odour. However, we do consider that works approval should be modified to limit the size of the tipping face during the filling of cell 5 in order to minimise potential for increased odours on residents to the north and east of the site. The operation of the landfill carried out in accordance with the Works Approval will meet the objectives and requirements of the BPEM in relation to odour and is consistent with the WMD (SDML) and the SEPP (AQM).
* It is acknowledged that because of the issue of the works approval allowing the ongoing operation of this landfill for a further 26 years, third-parties will no longer have access to review rights once the licence for the landfill expansion is issued by the EPA. However, there are several mechanisms through which the community in general can continue to have ongoing opportunities to raise concerns about the operation of the Werribee landfill, and to have those concerns addressed. These include the Wyndham Community Reference Group which has been used to inform, consult and engage in the development of implementation plans and programs which affect Melbourne’s waste and resource recovery. WREC will also be will be able to monitor the performance of the landfill via the Annual Performance Statement which is required to be lodged with the EPA by the licence holder each year. WREC also can make complaints, request information through the EPA and Wyndham City Council and the Wyndham Community Reference Group.
* The EPA has adequate powers to ensure the accountability of the operators of the landfill against its licence and the public has adequate opportunity to monitor the offsite impacts and performance of the landfill and EPA monitoring via various available sources. The estimated life extension of 26 years is in accordance with the long-term planning framework necessary for major landfill facilities.

## Preliminary Matter

### The question of law[[6]](#footnote-7)

1. At the start of the hearing WREC, the Environment Protection Authority (EPA) and the Wyndham City Council (Council) agreed on the terms of a question of law that would be put to the Tribunal.
2. The Tribunal by Order dated 29 May 2018 directed the parties to file with the Tribunal submissions addressing the question of law which was identified as follows:

Is the required BPEM outcome to prevent offensive odour beyond the boundary of the premises inconsistent with clause 15(3)(a) of the Waste Management Policy (Siting, Design and Management of Landfills (WMP (SDML)) which requires an application for a works approval for a landfill site to comply with all other State Environment Protection Policies?

1. Submissions were received from WREC, the EPA and Council.
2. Pursuant to Clause 66(1) (b) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the question of law was referred to a legal member to provide an opinion on the question.
3. Somewhat surprisingly, all three parties who made submissions effectively contend that the answer to the question is ‘No’ – i.e. that there is no inconsistency between the BPEM and the WMP (SDML). There is accordingly no question of law to be resolved by a Legal Member, in terms of the question expressly framed by the parties.
4. However, WREC on one side, and the EPA and Council broadly on the other, appear to contemplate quite different outcomes resulting from this answer in relation to the interpretation, status and potential applicability of the BPEM outcome.
5. The Tribunal by Order dated 14 June 2018 advised the parties that in these circumstances it is not appropriate for VCAT itself to seek to re-frame the question of law, or for a Legal Member to determine a different question. The Tribunal further commented that the parties may consider that matters regarding the interpretation, status and potential applicability of the BPEM outcome are matters for the Tribunal as constituted, rather than raising a question of law to be determined by a Legal Member.
6. The parties were requested to clarify their position on this matter.
7. In response to the 14 June 2018 Order, the EPA and the Council responded that there is no additional question of law identified in the proceeding that required determination by a legal member. The EPA and the Council consented to the Tribunal as presently constituted determining any matters regarding the interpretation, status and potential applicability of the BPEM relevant to the State Environment Protection Policy and the Waste Management Policy.
8. WREC also consented to the presiding member of the Tribunal considering and determining the question of law identified and the matters regarding the interpretation, status and potential applicability of the BPEM outcome[[7]](#footnote-8).
9. These submissions confirm that the answer to the question of law is ‘No’ and there is therefore no longer a need for a legal member to determine this question. The remaining issue in dispute between the parties concerns the interpretation, status and potential applicability of the BPEM outcome.
10. To the extent that WREC considers that this issue remains as a question of law, it has consented to the presiding member of the Tribunal as presently constituted determining that question.

### The statutory framework

1. The parties in this matter provided a detailed explanation of the statutory framework relating to the management of landfill operations in Victoria and to the protection of the environment more generally.
2. It is not necessary for us to repeat that material in any detail in this decision. Nevertheless, to provide the appropriate context around the interpretation, status and potential applicability of the BPEM outcome in this case, we have included below the following summary of the statutory framework as it applies specifically to the management of odour emanating from landfills.

#### The EP ACT

1. All parties agree that the starting point in this matter is the EP Act, the purpose of which is to create a legislative framework for the protection of the environment in Victoria having regard to the principles of environment protection. Odours comprise part of the environment.
2. Section 16(1) of the EP Act empowered the Governor in Council to declare the State Environment Protection Policy (Air Quality Management) (SEPP (AQM) and section 16A (1) empowered the Governor in Council to declare the WMP (SDML).

#### The SEPP (AQM)

1. The aims of the SEPP (AQM) are[[8]](#footnote-9):

(a) ensure that the environmental quality objectives of the State environment protection policy (Ambient Air Quality) are met;

(b) drive continuous improvement in air quality and achieve the cleanest air possible having regard to the social and economic development of Victoria; and

(c) support Victorian and national measures to address the enhanced greenhouse effect and depletion of the ozone layer.

1. The SEPP (AQM) does not prescribe environmental objectives for odour emissions from landfills specifically but does require a generator of emissions (including presumably a landfill operator) to manage their activities and emissions in accordance with the aims, principles and intent of the policy, to pursue continuous improvement in their environmental management, and to apply best practice to the management of emissions[[9]](#footnote-10).
2. One of the six beneficial uses protected by the SEPP (AQM) is local amenity and aesthetic enjoyment.
3. Under schedule A to the SEPP (AQM) odour emissions from a landfill are ‘unclassified indicators’ which are defined as ‘indicators of the beneficial uses of local amenity and aesthetic enjoyment, namely odour and total suspended particles (nuisance dust)’[[10]](#footnote-11). The air quality objective for the protection of local amenity and aesthetic enjoyment of the air environment is a design criteria of 1 odour unit, 99.9th percentile, three-minute average at or beyond the property boundary[[11]](#footnote-12).
4. Clause 16 of the SEPP (AQM) empowers the EPA to require a generator of emissions to undertake a risk assessment if it believes a risk assessment will contribute to a better understanding of the impact of the activities of a generator of emissions on the beneficial uses of the environment. The Authority may use the findings of a risk assessment in making statutory decisions or determining whether a generator of emissions complies with the policy.

#### The WMP (SDML)

1. The WMP (SDML) is a waste management policy that seeks to protect people and the environment, including local amenity, from the inherent risks posed by the disposal of waste to landfill. This is achieved by providing a framework and tools to implement the wastes hierarchy, consistent with the broader objective of ecologically sustainable development[[12]](#footnote-13).
2. The objectives of this policy are to:

(a) protect the environment, including human health and amenity, from risks that may be posed by the disposal of waste to landfill;

(b) encourage innovation, cleaner production, resource efficiency and waste reduction, including promoting and facilitating the diversion of waste from landfill, in accordance with the wastes hierarchy; and

(c) minimise the development and use of landfills, consistent with the policy principles.

1. Policy principles and policy intent are specified in the WMP (SDML) at Clause 10(1). When considering a works approval application, the EPA is required to pursue the objectives and apply the principles and intent of the policy.
2. In relation to the siting, design and management of a landfill, the general requirements at Clause 15(3) requires an applicant for or holder of a works approval or licence for a landfill site to:

(a) comply with the policy as well as all other relevant State environment protection policies and waste management policies;

(b) meet the objectives of the BPEM; and

(c) meet each required outcome of the BPEM.

1. An applicant for or holder of a works approval or licence for a landfill site should use the suggested measures in the BPEM to demonstrate that subclause (3) will be met[[13]](#footnote-14). Clause 15(4) states that if an applicant for a works approval, licence or licence amendment proposes measures alternative to the suggested measures of the BPEM, the Authority shall not issue the works approval, licence or licence amendment unless the applicant satisfies the Authority that the alternative measures:

(a) meet the requirements of subclause (3); and

(b) provide at least an equivalent environmental outcome to that provided by the suggested measure.

#### The BPEM

1. Under the heading Objectives of the landfill BPEM it is stated that the BPEM are guidelines that aim to provide existing and future operators of landfills, planning authorities and regulating bodies with:
* information on potential impacts of landfills on the environment and how these are to be mitigated.
* a clear statement of environmental performance objectives for each segment of the environment.
* information on how to avoid or minimise environmental impacts, including suggested measures to meet the objectives[[14]](#footnote-15).
1. The BPEM objectives state[[15]](#footnote-16):

These guidelines are intended to be used as a default position for landfill siting, design, operation and rehabilitation. Landfill operators must meet the objectives and required outcomes by implementing the relevant best-practice measures, described as suggested measures, contained herein. Where a landfill operator believes that, for a particular section of the guidelines, alternative means can achieve the objectives and required outcomes, a risk-based assessment will be required to support the proposed alternative measure. Alternatively, if EPA believes that additional requirements are needed to protect the environment, then this will also be supported by a risk based assessment.

1. Clause 6.7.3 acknowledges that landfill odour is a key consideration in landfill siting and that good operation and adequate buffers are essential in odour management. Buffers are set to account for upset conditions and are not a substitute for best-practice management at the landfill or for normal operating conditions. At all times, a landfill must be managed to prevent offensive odours beyond the boundary of the premises. For existing landfills this will be assessed by community complaints that are verified by EPA officers. Where surrounding land uses include residential, educational, health care or other sensitive uses, the highest degree of care must be taken to protect these areas from landfill odours.
2. The relevant objectives and outcomes for odour are:
* **Relevant BPEM objective**

To ensure that air quality objectives are met, and that there is no loss of amenity from odour or dust.

* **Required outcomes of the BPEM**

Prevention of any offensive odours beyond the boundary of the premises…….

* **Suggested measures of the BPEM**
* Ensure waste is covered appropriately and on time.
* Implement a reactive management plan including real time monitoring for PM10, where necessary.

#### Submissions on the interpretation, status and potential applicability of the BPEM outcome.

1. As previously mentioned, in relation to the question of law identified and agreed to by the parties at the hearing, each of the parties effectively contend that the answer to the question is ‘No’ – i.e. that there is no inconsistency between the BPEM and the WMP (SDML).
2. Notwithstanding, differences remain between the parties about the outcomes that flow from this answer.
3. WREC submits that the Council is required to meet the odour requirements of the BPEM in addition to those in the SEPP (AQM) to satisfy the WMP (SDML). WREC further submits that the BPEM constitutes a more onerous requirement than those in the SEPP (AQM) and there is no expressed or implied ability to satisfy the BPEM by completing a health risk assessment as allowed by the SEPP (AQM).
4. WREC submits that in contrast to the SEPP (AQM) the BPEM contains requirements for no offensive odour beyond the boundary of the premises, that are specific to landfills, are absolute and are additional, not alternative, to the requirement for no loss of amenity.
5. WREC submits that the applicant is required to comply with the WMP (SDML) which requires compliance with both the BPEM and the SEPP (AQM). WREC submits compliance with both is possible by complying with each of the requirements simultaneously by meeting the more stringent of the requirements.
6. WREC provided a summary of the history and legislative status of each of the SEPP (AQM), WMP (SDML) and the BPEM in support of its submission that in a situation in which multiple controls are applicable the provisions of each regime must be complied with independently of the other. WREC submits therefore there is no inconsistency between two legislative provisions where simultaneous obedience with each of them is possible, even where one imposes more stringent conditions than the other[[16]](#footnote-17). Similarly, because the BPEM is incorporated into the WMP (SDML) it is a legislative instrument and must therefore be obeyed.
7. In this context WREC submits there is no inconsistency between the odour provisions of the BPEM and the requirements of the WMP (SDML) to comply with the odour provisions of the SEPP (AQM). Consequently, WREC submits the SEPP (AQM) should be interpreted as having a field of operation in accordance with its terms but which does not preclude the operation of other subordinate instruments within their field of operation and in accordance with their terms. The SEPP, in WREC’s submission must be adhered to generally in relation to air quality in Victoria, while the BPEM must be adhered to in relation to the odours generated by landfills.
8. For their part the EPA and the Council adopt broadly similar submissions that the combination of the EP Act, the SEPP (AQM), the WMP (SDML), and the BPEM form a comprehensive and integrated framework which, in acknowledgement of the risk to local amenity and aesthetic enjoyment of the air environment, establishes a standard of air environment protection that is best described as performance based and contextual.
9. In this way, they submit that the framework applied in an integrated manner as intended, contains both quantitative and qualitative elements. They submit a landfill that emits an odour at a concentration at the property boundary in accordance with schedule A of the SEPP (AQM) is deemed to protect local amenity and aesthetic enjoyment of the air environment from odour emissions. They submit that in circumstances where a landfill does not meet this design criteria, the landfill may or may not adversely impact local amenity and aesthetic enjoyment of the air environment. Whether an adverse impact arises is to be determined by considering the results of a health risk assessment, as provided for in clause 16 of the SEPP (AQM).
10. The EPA and the Council submit that the standard of environmental protection to be achieved by any landfill proposal is the same under the SEPP (AQM) and the BPEM, and there is no inconsistency between them.

Findings

1. We agree with all parties that the answer to the question of law posed at the hearing is “No”. There is therefore no inconsistency between the BPEM and the WMP (SDML).
2. We disagree with WREC however that the consequences of that finding is that the BPEM requirements for no offensive odour beyond the boundary of the premises, are absolute in their application.
3. The approach to be taken in the application and implementation of the statuary framework around the protection of the environment in Victoria has been considered previously by the Tribunal on several occasions.
4. The Tribunal in *Dual Gas Pty Ltd & Ors v Environment Protection Authority[[17]](#footnote-18)* concerned the review of an EPA works approval for the Dual Gas Demonstration Project, involving use of coal gasification technology. The Tribunal turned its mind to the consideration and application of the SEPP (AQM), including ‘best practice’ and whether the project was inconsistent with the aims, principles and intent of the SEPP. The Tribunal made the following pertinent observations:

Given that cl 18(3) of the SEPP (AQM) refers to the “aims, principles and intent” of the policy collectively, and s 33B (2)(b) refers to inconsistency with the policy generally, we consider that these matters should all ultimately be considered holistically in order to determine whether there is an inconsistency with the SEPP (AQM) as a whole. This is consistent with the view of the Supreme Court in *Geelong Community for Good Life Inc. v EPA & Anor* [123], where it was stated that the various ‘principles of environmental protection’ in the EP Act (which are effectively mirrored in cl 7 of the SEPP (AQM)) should be balanced together in reaching a decision.

The task of undertaking an integrated assessment is made harder here because the SEPP (AQM) contains many provisions that are qualitative rather than quantitative. As we noted in our introduction, some of the relevant policies and measures debated before us are themselves in a dynamic state of change or political uncertainty. In such an environment, we do not consider it appropriate for the objectors to simply point to certain individual policies or measures relevant to the operation of the SEPP (AQM), and to pull them apart individually to expose the occasional anomaly or variant as evidence of overall inconsistency. Inconsistency with the SEPP (AQM) must be objectively assessed by simply weighing up all of the various factors, and reaching a balanced view as to whether the use of the DGDP “will be inconsistent” with the SEPP (AQM).

1. WREC, in anticipation of the other parties relying on *Dual Gas* in support of their submissions, say that any reliance on *Dual Gas* is misconceived in this case. WREC submits that the comments in *Dual Gas* indicating that broadly expressed policy statements may not be used in isolation as indicators of the breach of those policies, do not in any way compel a broad reading of the requirements of the BPEM. WREC relies on the Tribunal’s decision in *Grosvenor Lodge[[18]](#footnote-19)* in support of its submission that the Tribunal has found before and is entitled to find again that the clearly expressed requirement of the BPEM is breached where the evidence supports such a conclusion.
2. We disagree with WREC’s submission on this point. The *Dual Gas* decision is informative because it clarifies and emphasises the contextual and performance based approach, or what it called a holistic approach, that has been adopted around the protection of the environment in Victoria. We note that WREC does not dispute the findings in *Dual Gas* as they relate to the need for a holistic approach to resolving issues around inconsistency with the policy generally, and whether there is an inconsistency with the SEPP (AQM) as a whole. It is their submission that this holistic approach does not extend to or compel a broader reading of the BPEM’s requirements.
3. Our reservations about WREC’s submission on this point is that it would be an unusual outcome if the requirements of the BPEM in relation to the loss of amenity from odour (and dust) were intended to be applied in absolute terms in circumstances where government had adopted a holistic, contextual and performance based approach to environmental management generally, with such approach emphasising best practice, continual improvement and consideration of issues in the context of social and economic circumstances.
4. There are very good reasons as to why the BPEM requirement relating to the loss of amenity from odour, should be applied having regard to the context of each individual site. Whether a loss of amenity arises from landfill odour is a function of a range of factors, including the odour emissions, the rate and severity of which is influenced by onsite management, but also the proximity of sensitive uses to the landfill, the location and concentration of those sensitive uses.
5. An assessment of whether a landfill meets the BPEM objective and outcome that there is no loss of amenity from odour and whether odours beyond the boundary are offensive is likely to vary from site to site. In circumstances where buffers around a landfill are well established (to deal with upset conditions) and there are few if any sensitive uses exposed to odours, a decision about whether the landfill meets the objectives and the outcomes of the BPEM is likely to be very different to that where the site context does not exhibit those characteristics.
6. Of course, if we were persuaded that the BPEM should be applied in the manner urged by WREC, our views about how the BPEM should be applied would be irrelevant. We would be obliged to apply the objective and the outcome as an absolute requirement.
7. Apart from our concerns expressed above about adopting an absolute and prescriptive approach in the context of a holistic, contextual and performance based statutory framework, we are not persuaded that the language of the BPEM calls for an absolute and prescriptive outcome. For example, clause 6.7.3 of the BPEM is alert to site context considerations by identifying the necessity for the highest degree of care where surrounding land uses include residential, educational, health care or other sensitive uses.
8. The objectives of the BPEM quoted above refer to “these guidelines” and requires landfill operators to “meet the objective and required outcomes”. The language is consistent with a performance based regime which typically emphasises the meeting of objectives rather than compliance with a nominated regulation or standard. The prospect of alternatives to the objectives and required outcomes is also canvassed in clause 6.7.3 as is the prospect of the EPA imposing additional requirements. In either case, risk based assessments are identified as the basis on which alternatives could be approached. This contrasts with a prescriptive regime in which there is no opportunity for the exercise of discretion to require a different outcome from a specific standard.
9. We are not persuaded that the Tribunal’s decision in *Grosvenor Lodge* referred to by WREC advances in any substantive way the submissions in favour of applying the BPEM in an absolute manner.
10. In that case (involving a combined planning permit application and review of a works approval for extension to a landfill and quarry) the Tribunal found that with respect to the works approval, the proposal if implemented in accordance with the conditions in the approval, would lead to noise pollution and will cause adverse and unreasonable noise that would affect the Applicants’ interests. The Applicants in that case were residents who lived close to the landfill and quarry. On the evidence before it, the Tribunal could not be satisfied that noise from the site would not adversely affect the interests of the Applicants.
11. The Tribunal in *Grosvenor Lodge* undertook its assessment of the works approval having regard to the site’s physical context, the proximity of sensitive uses to the site and the impact of noise on those residents. *Grosvenor Lodge* is not in our view authority for the objectives and the required outcomes of the BPEM being applied in absolute terms. To the contrary, the Tribunal’s findings are more consistent with a contextual and performance based or holistic approach articulated in *Dual Gas*.

## Should a Works Approval be issued?

1. WREC’s grounds of review have been outlined previously. In broad terms WREC submits that the works approval does not comply with clauses 15(3) to 15(5) of the WMP (SDML) and consequently, the operation of the landfill carried out in accordance with the works approval would cause pollution or an environmental hazard. WREC raises several technical issues that it submits have not been adequately addressed and which remain unresolved. WREC submits that the resolution of these issues ought not be left to a later detailed design stage. It submits the unresolved issues are fundamental to the successful operation of the landfill and are most appropriately resolved ‘upfront’ as part of the works approval process during which the community can continue to have meaningful involvement through review processes.
2. WREC’s concerns also address broader policy considerations around the justification for the provision of additional landfill airspace. The proposed time frame for the operation of the landfill (26 years) is also of concern to WREC especially in circumstances where, following the issue of the works approval, the community will be denied further opportunity to seek a review of the EPA’s decision making.
3. We address each of these matters below.

### Is there any justification for the development of additional landfill airspace?

1. WREC’s concerns relate to the perception that granting an extension to the landfill undermines government policy that landfilling is the ‘last resort’ for waste material by allowing the further development of a series of large landfill operations around Melbourne; Werribee being one of them. They contend that any extension should be on a short-term basis to assist in promoting the diversion of waste from landfills to recycling. They note that there are several other major landfills which have capacity to take waste from the metropolitan area in the short term and consider that any extension of the RDF should be for a limited period of time (5 to 10 years), not for the estimated 26 years. Limiting the length of time the landfill can operate will allow future developments in recycling to be more easily implemented.
2. In reviewing the works approval application, the EPA sought input from the Metropolitan Waste and Resource Recovery Group (MWRRG) in relation to the importance of the RDF as a long-term waste disposal facility for the metropolitan region. Waste management within the metropolitan regions is addressed in the Metropolitan Waste and Resource Recovery Implementation Plan (MWRRIP). The MWRRG noted that 4 of the 5 current significant landfills are licenced to operate beyond 2026 and are designated as Hubs of State importance in both the Metropolitan Implementation Plan and the State-wide Waste and Resource Recovery Infrastructure Plan (SWRRIP). Significantly MWRRG states the Metropolitan Implementation Plan identifies that if any of these five landfills – including the Werribee landfill – do not operate in accordance with the landfill schedules sequence table, the metropolitan Melbourne region will not have sufficient landfill capacity.
3. The MWRRG advised that the Werribee landfill has potential capacity to operate beyond 2046, and has the potential to accommodate additional improved resource recovery operations for organic and general waste over the long term. They note that the Werribee landfill is identified in several places as a significant landfill in the Metropolitan Implementation Plan. They further note that Werribee also receives waste from Barwon South West Region and if closed would create waste disposal issues for that region.
4. We were advised that approximately 73% of all waste in metropolitan Melbourne is currently recovered and not landfilled and while the MWRRG seeks to reduce Melbourne’s reliance on landfill through new resource recovery infrastructure it is estimated that around 3 million tonnes per annum will still need to be landfilled in Melbourne over the next 30 years.
5. The EPA works approval application assessment report notes that “The proposed facility is considered to be consistent with the SWRRIP and the MWRRIP for the purposes of being able to consider the application. The proposed lifespan until 2043/44 is within the planning horizons of the SWRRIP (2015 – 2044) and MWRRIP (2016 – 2046).”
6. We find that the EPA, MWRRG and SWRRIP submissions provide compelling support for the need to both continue the operation of the RDF and increase the number of cells available in order to provide long term certainty for the ongoing operation of the RDF as a landfill site which has both metropolitan and regional significance.

### Are there any technical issues which have not been adequately addressed to enable issue of a works approval?

1. WREC contends that several of the technical investigations undertaken as part of the works approval application have not been sufficiently rigorous to enable a definitive decision to be made in relation to potential off-site impacts. Specifically, these relate to the landfill type, slope stability of the outer embankments, depth to undisturbed groundwater level and odour discharges beyond the boundary of the premises.
2. We address each of these issues below.

#### Landfill type

1. WREC note that it is proposed for this to be an area and mound type landfill and content that it is considered an inappropriate style of landfill. They note that the landfill BPEM identifies mound landfills are to be avoided as their exposed nature requires significant litter controls and present a significant visual impact on the landscape. Further difficulties attached to these landfills are leachate seeps from the side of the landfill and the stability of the landfill cap.
2. As the landfill is proposed to be developed in a disused quarry hole WREC considers that the maximum height of filling should be no more than that required to enable the drainage of the capping back to the natural ground surface rather than the approximately 24 m above ground level currently proposed.
3. Mr Nolan, who was called to give evidence by WREC advised that in his opinion the proposed landfill type is indeed an area and mound landfill. This was confirmed by Mr Thompson, who stated that this type of landfill while not considered ideal has been proven to meet the requirements of the landfill BPEM. He noted that this type of landfill is well established on the west basaltic planes in Victoria; notably at Deer Park, Brooklyn, Sunshine and Corio, which are all sited closer to built-up areas than the Werribee landfill.
4. We note that the Werribee landfill has operated as an area and mound landfill since 2008 and as noted by the EPA in their works approval assessment while Werribee landfill has been issued with formal enforcement notices they have taken appropriate actions which resulted in the revocation of the notices. EPA further notes that Werribee Council has initiated landfill management improvements to resolve legacy issues to improve the environmental performance at the Werribee landfill.
5. We place considerable weight on the fact that this landfill has successfully operated since 2008 as an area and mound landfill at the same height as currently proposed and that several other landfills in this region of metropolitan Melbourne are of the same type. While there has been a need for the EPA to issue enforcement notices these have been promptly and appropriately rectified. Landfill operations are audited on an annual basis by an independent expert to ensure compliance with the EPA licence which provides the EPA with ongoing information in relation to the performance of the operators and therefore public accountability. We also note that the design of each landfill cell requires EPA approval prior to construction. This will allow any improvements in landfill design and operation standards to be incorporated at the commencement of each new cell. We were advised that each cell is designed to provide for approximately 2 years of landfilling.
6. Other significant landfills in the metropolitan region have similar extended EPA licence time frames for operation. We were advised that a planning permit for 80 years is currently in place at the Ravenhall landfill.
7. In view of the importance, successful operation and continued independent review and evaluation of the ongoing operation of the Werribee landfill we consider that the continuation of the operation of landfill as an area and mound landfill is appropriate and should not be considered as a basis to refuse the works approval.

#### Slope stability of the outer face

1. WREC raised concerns in relation to the side slopes of the mound landfill or in particular the steepness of the batters and control of erosion. They submit that a detailed assessment of the stability is lacking. It submits that the stability assessment was proposed to be undertaken as part of the detailed design but there were concerns that if the detailed design assessment confirmed that the slopes were unstable the whole design of the landfill would be in jeopardy.
2. Mr Piper presented a report to the Tribunal detailing the geotechnical assessment of the landfill stability and erosion control. In summary his report identified that the design of the landfill cap and side slopes are in accordance with the landfill BPEM and provided it is constructed in accordance with the requirements of the BPEM the landfill slopes will remain stable. He noted that the construction of the cap and side slopes will need to be verified by an EPA auditor.
3. We are satisfied that based on the recent report prepared by Mr Piper slope stability of the outer face is an issue which can be addressed in detail at the design stage but based on current information can be designed to be in accordance with the landfill BPEM to ensure its long term stability.

#### Long-term groundwater levels

1. Groundwater levels at the site have been monitored since the early 1990’s with dewatering ceasing in 1996. WREC is concerned that the groundwater monitoring associated with the site was undertaken during a prolonged dry spell and therefore may not represent the long-term undisturbed water table level. As it is a BPEM requirement for waste to be deposited a minimum of 2 m above the long-term undisturbed water table WREC considers that there is insufficient accurate groundwater level monitoring of the site to clearly establish the accuracy of the floor level of the cells and therefore the design is in breach of the BPEM.
2. We were provided with considerable historic and recent information in relation to groundwater monitoring both within and adjacent to the site, together with additional groundwater information associated with more recent groundwater bores which was not available prior to the hearing.
3. Mr Ife’s evidence is based on a series of bores which were installed in March 2008 together with historic groundwater level monitoring. He considers that there is only a limited correlation between groundwater levels and rainfall mass, suggesting that the groundwater system in the basalt at this location is at least partially isolated from the influence of rainfall recharge. This is confirmed also by groundwater chemistry and the elevated salinities in the area.
4. He stated that monitoring of up and down gradient bore water quality indicates that the groundwater is not currently being affected by leachate migration from the landfill. He further noted that the travel time for a particle of leachate impacted groundwater to travel from the site to the nearest down gradient groundwater dependent ecosystem was calculated to be about 300 years.
5. Analysis of the more recent groundwater level monitoring by GHD in June 2017 resulted in Council proposing that the base of cells 5A, 5B and 5C should be based on the 95% Upper Confidence Limit with additional design modifications for protection against groundwater uplift pressures on the base of the cells.
6. We note that during the initial assessment of groundwater elevations in relation to land filling that the EPA raised concerns and additional groundwater investigations were undertaken. This resulted in the provision of additional design and management measures for cells 5A, 5B and 5C being included in the works approval. These additional measures in essence provided an additional drainage layer below the relevant cells with any drainage been directed to sumps to enable pump-out to the leachate management system.
7. Mr Nolan raised concerns in relation to the detail design of the additional sub drainage measures and considered that this should be fully undertaken prior to the issue of a works approval. However, as all other aspects of landfill design are undertaken as part of the detailed design and submitted to the EPA prior to approval for construction, we consider this to be an unnecessary requirement.
8. We find that the WREC concerns in relation to long-term groundwater level have earlier been raised by the EPA and addressed by the proponent. This has resulted in design modifications which the EPA considered to be suitable to enable the design of the landfill to progress.
9. As the BPEM allows for waste to be deposited less than 2 m above the long-term undisturbed depth to groundwater if, “additional design and management practices to protect groundwater quality will be implemented” and the proposed modification to the leachate collection system below the relevant cells has been approved by the EPA we consider that proposed design meets the requirements of the BPEM.

#### Off-site odour

1. WREC odour concerns related primarily to the adequacy of the environmental risk assessment undertaken by GHD in that the odour modelling was based on emission of odours at ground level while the landfill expansion will rise to 24 m above ground.
2. Connie Menegazzo, a resident living approximately 1.8 km from the Werribee landfill advised that the number of odour issues experienced at her house increased when the elevation of the landfill rose above ground level. In particular she noticed an increase in early mornings when there is little or no wind.
3. Ms Menegazzo advised that she has maintained an ongoing spreadsheet of dates on which she has experienced odour issues. She acknowledged that since the appointment of a new manager at the landfill Council’s response to issues have improved and the odour incidents have reduced. But she remains concerned in relation to odour issues from the proposed enlargement of the landfill which will be closer to her house.
4. Ms Freeman reviewed the odour modelling undertaken by GHD in June 2017 and raised concerns in relation to:
	* + - 1. The use of the “Odour Environmental Risk Assessment for Victorian Broiler Farms” prepared by the EPA in 2017 as an appropriate method to be relied on in relation to landfill emissions.
				2. The accuracy of the meteorological data used by GHD in undertaking the odour modelling.
				3. The impact of the uncertainties in modelling and inputs on the appropriateness of the odour risk assessment.
				4. Variability in the Odour Emission Rates (OER’s) not being subject to a sensitivity analysis.
5. The EPA advised that as there is no EPA Odour Environmental Risk Assessment for landfills, it has adopted the broiler farms methodology as being currently the most appropriate to use for landfills.
6. Both Dr Graeme Ross and the EPA confirmed that the meteorological data used by GHD is considered to be the most accurate available for the site.
7. Ms Freeman acknowledged that the computer model, AERMOD, used by GHD is recommended by the EPA but advised that due to its shortcomings in modelling of dispersion in low wind speeds for area sources a more appropriate model would have been CALPUFF.
8. We were advised that subsequent to the modelling undertaken by GHD, a peer review by Dr Terry Belair raised concerns in relation to odour emission rates used in the earlier modelling. As a result, actual emission rates from the tipping face at the Werribee landfill were sampled during summer to provide more accurate data for additional modelling, which was subsequently undertaken by Dr Graeme Ross.
9. The results of the additional modelling were presented at the hearing, together with the opinions of Drs Bellair and Ross in relation to the conclusions reached by the GHD modelling.
10. In summary, Drs Bellair and Ross confirmed the risk assessment undertaken by GHD, even with the additional monitoring and modelling undertaken. They concurred that there was only a moderate risk of odours in excess of 5 OU being experienced at Ms Menegazzo’s residence. This will occur during filling of the cell nearest her house and then reduce as the cells further to the west are developed.
11. We were advised by several of the experts that the predominant source of odour is from the tipping face in summer, particularly when the waste is being compacted. The monitoring of tipping face odour undertaken at the behest of Dr Bellair and used in Dr Ross’ modelling is one of the few samples undertaken in Australia.
12. We note the evidence of Mr Neil Thompson that the site currently operates efficiently with a tipping face of less than 900 m², yet the licence allows for a tipping face area of up to 1250 m². In view of the importance of the area of the tipping face in the production of odour we consider that the EPA works approval should be modified to specifically limit the area of the tipping face to 900 m² during the filling of cell 5. This will assist in minimising odour risks on dwellings to the east and north of the site.
13. Ms Freeman advised that her modelling indicated that offsite odours were essentially unchanged whether the working face was in the base of the quarry pit or at ground level around the landfill site. She also noted that predicted odour concentrations at off-site receptors were lower when the working face was at a higher elevation. This was confirmed by both Drs Bellair and Ross who advised that there would be lower odour concentration at off-site receptors when working face was at a higher elevation due to increased dispersion. Thus, the modelling undertaken by GHD could be considered as the worst case scenario.
14. Ms Freeman noted that the dwelling situated to the west of the site is within the required 500 m EPA buffer. We were advised that this dwelling is now owned by the Council and therefore not considered in breach of the buffer requirements.
15. We note that while there are concerns in relation to potential odour impacts on the adjacent residents the monitoring and modelling undertaken by a number of specialist experts, together with the EPA recommend risk assessment methodology identifies that the expansion of existing landfill will have minimal impact in terms of increased odour. However, we do consider that works approval should be modified to limit the size of the tipping face during the filling of cell 5 in order to minimise potential for increased odours on residents to the north and east of the site.
16. We are satisfied therefore that the operation of the landfill carried out in accordance with the Works Approval will meet the objectives and requirements of the BPEM in relation to odour and is consistent with the WMD (SDML) and the SEPP (AQM).

### Is the provision of long-term landfilling contrary to the principles of accountability by removing access to third-party review?

1. WREC is concerned that by effectively allowing the ongoing operation of this landfill for a further 26 years third-party review rights will be locked out for at least a generation as there is no access to third-party review once the license for the landfill expansion is issued by the EPA. WREC contends that approval should only be issued to allow landfilling for 5 to 10 years.
2. Mr Monaghan on behalf of the MWRRG notes that affected neighbours will have further opportunities of participating in forums so as to raise concerns about the operation of the Werribee landfill, albeit not by way of review to VCAT of works approval decisions.
3. He stated that the Wyndham Community Reference Group has been used to inform, consult and engage in the development of implementation plans and programs which affect Melbourne’s waste and resource recovery. He also noted that the reference group has been valuable in improving communications between the landfill manager and Ms Menegazzo in relation to operational issues.
4. WREC will be able to monitor the performance of the landfill via the Annual Performance Statement which is required to be lodged with the EPA by the licence holder each year. WREC also can make complaints, request information through the EPA and Wyndham City Council and the Wyndham Community Reference Group.
5. We note that the statutory scheme under the EP Act and under the policies of the EPA is not one in which landfills are only approved for 5 or 10 years or require a VCAT review each time a cell is proposed. Long-term planning for landfill operation provides many benefits, including the ability to let long-term contracts and to provide certainty for the community in terms of the management of waste disposal, and potential conflicts with nearby land uses.
6. As noted by the EPA it typically takes more than 5 years to develop a new landfill. If the development of each cell was to be subject to extended public involvement and review every 2 years as well as review by the EPA, the time delays and cost to the operator and therefore the public would be increased dramatically. It is important that having established a landfill there should be long-term continuity in its operation to maximise the benefits to the wider community.
7. It is the role of the EPA to professionally and expertly review the development of new landfills and all new landfill cell applications, as well as the ongoing operation of landfills.
8. We are satisfied that the annual reporting to the EPA and individual cell development application reviews by the EPA, is sufficient to ensure that the landfill operations are undertaken to appropriate standards. The community continues to play an important role in achieving this outcome through the various mechanisms outlined above.
9. If new technologies arise which further reduce the need for landfilling we would anticipate that both the EPA and the regional waste management groups as part of their operating principles and guidelines will assist in the implementation of the new technologies.
10. We find that the EPA has adequate powers to ensure the accountability of the operators of the landfill against its licence and the public has adequate opportunity to monitor the offsite impacts and performance of the landfill and EPA monitoring via various available sources. The estimated life extension of 26 years is in accordance with the long-term planning framework necessary major land facilities.

## conclusion

1. It follows from the above reasons that it is our conclusion that the decision of the EPA should be varied and the works approval issued to allow the extension of the landfill operations for the deposit of solid inert waste, putrescible waste, and pneumatic tyres shredded into pieces <250mm subject to the additional condition we have imposed relating to the area of the tipping face in cells 5A, 5B and 5C

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| --- | --- | --- |
| Laurie Hewet**Senior Member** |  | Greg Sharpley**Member** |

1. We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-2)
2. WREC’s standing as a person whose interests are affected by a decision is not in dispute in this matter. An application was made by Wyndham City Council for summary dismissal of the proceeding partly on the ground that WREC lacks standing to make an application under s 33B (2) (b) of the EP Act. The Tribunal by Order dated 31 January 2018 dismissed Wyndham City Council’s application. [↑](#footnote-ref-3)
3. Publication 788 dated 2001, (Version 3 August 2015). [↑](#footnote-ref-4)
4. WREC’s grounds were confined by Order of the Tribunal dated 31 January 2018 [↑](#footnote-ref-5)
5. *Thirteenth Beach Coast Watch Inc. v* *EPA* [2008] VCAT 1880. The Tribunal’s findings in *Thirteenth Beach* has been consistently followed by other divisions of the Tribunal. See for example *Grosvenor Lodge Pty Ltd v Mornington Peninsula SC & Ors* [2010] VCAT 1006 [↑](#footnote-ref-6)
6. While the issues posed in the question of law and the matters regarding the interpretation, status and potential applicability has been determined by Senior Member Hewet as the Presiding Member we both agree with this determination so we refer to the findings of the Tribunal as ‘we’ throughout these reasons. [↑](#footnote-ref-7)
7. Clause 66(1)(a) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act* *1998* provides that if the Tribunal is constituted for the purposes of a proceeding under a planning enactment without a judicial member or a member who is an Australian lawyer, a question of law arising in the proceeding may be decided by the presiding member unless the parties that are present at the hearing of the proceeding disagree; [↑](#footnote-ref-8)
8. SEPP (AQM) clause 6. [↑](#footnote-ref-9)
9. SEPP (AQM) clause 18(3). [↑](#footnote-ref-10)
10. SEPP (AQM) clause 10(1)(d) [↑](#footnote-ref-11)
11. SEPP (AQM) schedule A [↑](#footnote-ref-12)
12. Preamble to WMP (SDML) [↑](#footnote-ref-13)
13. WMP (SDML) clause 15(4) [↑](#footnote-ref-14)
14. BPEM clause 1.1 [↑](#footnote-ref-15)
15. BPEM clause 1.1 [↑](#footnote-ref-16)
16. *Australian Boot Trade Employees Federation v Whybrow* (1910) 10 CLR 266. [↑](#footnote-ref-17)
17. (Includes Summary) (Red dot) [2012] VCAT 308 [↑](#footnote-ref-18)
18. *Grosvenor Lodge Pty Ltd v Mornington Peninsula SC & Ors* [2010] VCAT 1006 [↑](#footnote-ref-19)